

Court of Appeals, State of Michigan

ORDER

Denise Von Arx v Livonia Family Physicians, PC

Docket No. 268516

LC No. 04-402910-NH

Kurtis T. Wilder
Presiding Judge

Michael J. Talbot

Kirsten Frank Kelly
Judges

The Court orders that the June 15, 2006, order is VACATED to the extent that it held the application in abeyance.

The Court further orders, pursuant to MCR 7.205(D)(2), that the January 31, 2006, order from the Wayne Circuit Court hereby is REVERSED IN PART to the extent that it relied on the principle of judicial tolling and the prospective application of *Waltz v Wyse*, 469 Mich 642, 651; 677 NW2d 813 (2004). Under *Ward v Siano*, __ Mich App __ (Docket No. 265599, issued 11/14/06), equitable tolling does not apply in this context. Further, this Court has held that *Waltz, supra*, has retroactive application. See *Mullins v St. Joseph Hosp*, 271 Mich App 503; 722 NW2d 666 (2006) and *Ousley v McLaren*, 264 Mich App 486, 494-495; 691 NW2d 817 (2004).

In all other respects, the delayed application for leave to appeal is GRANTED, limited to Issue I raised in the application. MCR 7.205(D)(4). In accordance with the above reasoning, Issues II and III are resolved in defendants-appellants' favor.

This matter is placed on the SUMMARY DISPOSITION TRACK. Amended Administrative Order 2004-5. Appellants' brief shall be filed 28 days from the certification of this order. Amended Administrative Order 2004-5, ¶ 9(B)(1).



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JAN 18 2007

Date

Sandra Schultz Mengel
Chief Clerk